

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Lloyd Hinn, Jr.,
Appellant,

v.

Pottawattamie County Board of Review,
Appellee.

ORDER

Docket No. 13-78-0186
Parcel No. 7554-33-202-002

On February 21, 2014, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Lloyd Hinn, Jr. of HHB, Inc. Property Tax Consultants represented Jiyami Hospitality Group, Inc. and requested a written consideration. Assistant County Attorney Leanne A. Gifford is counsel for the Board of Review. The Appeal Board now, having examined the entire record and being fully advised, finds:

Findings of Fact

Lloyd Hinn, Jr. protested on behalf of Jiyami Hospitality Group, Inc. the owner of property located at 3537 W Broadway Street, Council Bluffs, Iowa. The real estate was classified commercial on the January 1, 2013, assessment and valued at \$1,800,000 representing \$190,210 in land value and \$1,609,790 in improvement value. According to the record, the property is operated as a Quality Inn. It is a two-story building, which was built in 1963 with an addition in 1988. The property has 47,137 square feet of gross building area and 89 rooms. It has typical hotel accoutrements such as paved parking area, yard lights, fencing, and signage, as well as an indoor pool. The site is 2.09 acres.

Hinn protested the assessment to the Pottawattamie County Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2).

He asserted the correct fair market value is \$820,800. The Board of Review denied the protest. The Board of Review's decision stated it had "no jurisdiction to consider petitions which are not signed by the one protesting or the protester's duly authorized agent."

Hinn then appealed to this Board.

First, the Board of Review contends Hinn has failed to show he has standing to challenge the assessment on the subject property, and believes this Board should summarily affirm the appeal for lack of jurisdiction. (Position Statement p. 1). The Board of Review, however, cites no authority for its position. The record shows Hinn signed the Board of Review's protest form. By signing the form, an individual acknowledges they are the "owner or duly authorized agent" of the property. Neither the form nor Iowa Administrative Rules require any additional authorization accompany a protest form filed with a local board of review. Iowa Admin. Code r. 701-20(4)(a) (requiring only signature by the taxpayer or taxpayer's authorized agent). We find the Board of Review's "dismissal" of the appeal for lack of jurisdiction, and its request that this board to affirm that finding, is without merit.

Hinn submitted several documents to the Board of Review in support of a claim that the property is over assessed. However, we find much of the evidence is not relevant and does not establish a fair market value of the subject property as of January 1, 2013. Further, Hinn provided limited explanation of the documents. The following is a list of the evidence in the certified record.

Assigned Exhibit No.	Description of Evidence	Number of Pages
3	Letter to Board of Review	3
4	Decision from Nebraska Tax Equalization Board - Case 10C-254	6
5	Decision from Nebraska Tax Equalization Board - Case 11C-134	11
6	Information regarding 3511 S 84th St., Omaha, NE	3
7	Information regarding 10708 M St., Omaha, NE	4
8	Information regarding transfer 4888 S 118th St., Omaha, NE	10
9	Fee Agreement for property located at 2109 Antique Dr., Walnut, Iowa	2
10	Market Value Review grid with three comparable properties	1
11	2012 Income Analysis of 2109 Antique Dr., Walnut, Iowa	3
12	2012 Income Tax Return for Subject Property	3
13	2011 Income Summary and P&L for Subject Property	5
14	2010 Income Summary for Subject Property	4
15	2009 Income Summary and P&L for Subject Property	9
16	Excerpt from The Valuation of Hotels and Motels for Assessment Purposes	56

Hinn submitted a letter to the Board of Review explaining his position. (Exhibit 3). He asserts the subject property was purchased in 2008 “at the high end of the spectrum” and its 2012 value would be greatly reduced.

Hinn also provided a Market Value Review grid, which included three properties he considered comparable and information about each property. (Exhibit 10). The unadjusted sale prices of the comparable properties ranged from \$1,050,000 to \$1,235,000. They sold between May 2010 and December 2011. Hinn did not adjust the sales even though he identified differences in condition, quality, and age. Furthermore, the properties are located in Des Moines, Pella, and Le Mars, Iowa, and may require a location adjustment compared to the subject. For this reason, we give this analysis no consideration.

Additionally, Hinn submitted information about two properties located at 10708 M Street and 3511 S 84th Street, Omaha, Nebraska. (Exhibits 6 & 7). In his letter to the Board of Review, he asserts 10708 M Street is located fourteen miles from the subject and has 103 rooms. Further, he claims the property’s current assessment is \$950,000, or \$9223 per room. Therefore, he believes the

subject's correct assessment is \$820,800 based on the comparable's per-room assessed value. First, we note the information Hinn provided indicates the 2012 assessment is \$950,000; we are unsure if the 2013 assessment is the same. Although he provides brief information about the property located at 3511 S 84th Street, he does not compare it to the subject. Regardless, the comparison of assessments of other properties is not sufficient evidence of the market value. Assessments of comparable properties could be used for an equity claim, but comparable properties for an equity analysis must be located in the same taxing jurisdiction.

Hinn also provided income and expense statements from 2009, 2010, and 2011. (Exhibits 13-14). A basic income analysis follows each year of income/expense information, which we summarize in the following chart.

Year	Net Operating Income (NOI)	Loaded Capitalization Rate	Value (Including FF&E)
2009	\$267,668.51	17.9%	\$1,495,354.80
2010	\$294,129.22	17.80%	\$1,652,411.35
2011	\$344,939.68	17.80%	\$1,937,863.09

First, we note the value conclusions would appear to support the current assessment. Second, it appears that actual market rates were used in the development of this analysis and there is no indication the actual rates are equal to market rates. Additionally, there is no explanation of how Hinn determined the capitalization rates or the FF&E of \$5000 per-room for each year; or what the final conclusion of value is for the January 1, 2013, assessment based on this information. For these reasons, we give this income analysis no consideration.

We find the additional evidence Hinn submitted, such as the Nebraska Tax Equalization Board decisions and the excerpt "The Valuation of Hotels and Motels for Assessment Purposes" by Stephen Rushmore and Karen E. Rubin, is insufficient evidence in determining the fair market value of the subject property. (Exhibits 4, 5 & 16). In his letter to the Board of Review, Hinn states the reason he

provided the Rushmore/Rubin excerpt is that he believes it demonstrates the cost approach should not be used to determine the assessed value, which is what he believes the assessor's office relied on. However, we note it is Hinn's burden to show the property is over assessed, and Iowa law recognizes cost as an alternative method of valuation.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The sales-comparison method is the preferred method for valuing property under Iowa law. *Compiano*, 771 N.W.2d at 398; *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 779 (Iowa 2009); *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). “[A]lternative methods to the comparable sales approach to valuation of property cannot be used when *adequate* evidence of comparable sales is available to *readily* establish market value by that method.” *Compiano*, 771 N.W.2d at 398 (emphasis added). “Thus, a witness must first establish that evidence of comparable sales was not available to establish market value under the comparable-sales approach before the other approaches to valuation become competent evidence in a tax assessment proceeding.” *Id.* (citing *Soifer*, 759 N.W.2d, at 782); *Carlson Co. v. Bd. of Review of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997). Before relying on the income approach or other factors, a party or witness must first establish that comparable sales are not available to value the property. *Compiano*, 771 N.W.2d at 397-99; § 441.21(2).

Hinn provided the assessments of hotel properties located in Omaha that he believes are comparable to the subject and asserts these assessments support a lower valuation of the subject property on a per-room basis. However, comparing the assessed values per room is not appropriate evidence for a market value claim. He also provided a market review grid with three sales (Exhibit 10) and two additional properties, (Exhibits 6 & 7) but he did not adjust any of them for differences. Lastly, Hinn included an income approach, but it was limited in scope and did not appear to determine if the actual income and expenses were similar to market income and expenses. While we recognize commercial sale transactions are driven largely by income expectations, Iowa law requires that evidence of comparable sales must be addressed before considering the income approach to value or

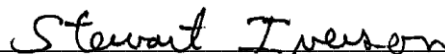
other factors. Further, the evidence lacked explanation and, ultimately, Hinn offered no conclusion of market value for the January 1, 2013, assessment based on the evidence. Thus, the record does not show that the property is assessed for more than authorized by law.

THE APPEAL BOARD ORDERS the 2013 assessment of the property located at 3537 W Broadway Street, Council Bluffs, Iowa, is affirmed.

Dated this 15th day of April 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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